BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

JAMES KLUCAS	)	
Claimant	)	
	)	
VS.	)	
	)	
SOLOMON CORPORATION	)	
Respondent	)	Docket No. 1,016,956
	)	
AND	)	
	)	
LIBERTY MUTUAL INS. CO.	)	
Insurance Carrier	)	

ORDER

Claimant requests review of the June 17, 2004 preliminary hearing Order entered by Administrative Law Judge (ALJ) Bryce D. Benedict.

ISSUES

The ALJ denied claimant's request for medical treatment reasoning that claimant had failed to file a timely written claim based upon an accident that occurred on April 14, 2003.[1] He further found that claimant did not suffer a series of accidents up until his last date of work on January 4, 2004, which would operate to extend the time in which claimant had to file his claim.

The claimant requests the Board reverse the ALJ's denial of benefits. He alleges that while there is no dispute as to his initial back injury on April 14, 2003, his job duties each and every day thereafter aggravated his back condition. Thus, claimant asserts that

[1] Both the ALJ and respondent reference April 9, 2003 as the accident date, but claimant's E-1 and his brief to the Board reference April 14, 2003 as the appropriate accident date. There is apparently no dispute that the accident occurred. Rather, there is a simple disagreement as to which date the accident occurred. Nonetheless, given the Board's ruling, the correct date is irrelevant.

his written claim, filed on May 17, 2004, is timely as his last date of work was January 4, 2004.

Respondent argues that the ALJ was correct in his findings. Respondent contends that claimant was injured on April 14, 2003 and did not file a claim or an application for hearing with the Division of Workers Compensation until May 17, 2004, which was over a year later. Respondent also contends that because claimant was never diagnosed with anything other than low back pain as a result of his April accident and did not report any other accidents, the ALJ was correct in determining that claimant did not suffer a series of accidents. Finally, respondent agrees with the ALJ that claimant is not entitled to medical treatment because he did not suffer serious injury from his fall that would require medical attention a year later.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

As of April 9, 2003, claimant was employed with respondent as a truck driver. Claimant's job was to pick up and haul various loads, including large transformers. When he would have to pick up transformers, claimant would roll them from the electric poles to and onto the truck.

On April 14, 2003, claimant was in the process of placing a tarp on top of his load. As he was pulling on a rope to tie the tarp down, the rope broke causing claimant to fall down, striking his hip and back. Claimant testified he injured his back, neck and experienced pain running down his left leg. Respondent directed claimant to Dr. Biggs, in Abilene, who diagnosed a low back strain and treated him conservatively. Claimant was then referred to an occupational facility and was released by both that facility and Dr. Biggs to return to work on April 22, 2003.

Claimant returned to work in May 2003 and continued to work as a truck driver but told his employer that because of his pain he could no longer roll any transformers. He apparently worked continuously, taking off a day here and there when his back was hurting. Then on January 27, 2004, claimant was terminated. According to claimant, he was told it was because he was not able to produce a good enough job.

Claimant again sought treatment from Dr. Biggs in April 2004 and at that time, Dr. Biggs provided the same diagnosis of low back strain and referenced complaints of several months in duration.[2]

[2] P.H. Trans., Cl. Ex. 1 at 1.

Linda Klucas testified that she helped her husband prepare and send in a written claim form which was sent to her by the State of Kansas. According to her, claimant took a copy of this claim to the employer. She does not have a copy of this document nor does she have any proof that she mailed the claim to the State of Kansas. When asked about a time frame when this document would have been mailed, Mrs. Klucas testified that she received a claim form within a couple of weeks of the April 2003 accident and that another form came from the state within about a month of the April 2003 accident.

K.S.A. 44-501(a)(Furse 2000) states in part: "In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends." K.S.A. 2002 Supp. 44-508(g) finds burden of proof as follows: "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

The written claim statute, K.S.A. 44-520a(a)(Furse 2000), provides in part:

> (a) No proceedings for compensation shall be maintainable under the workmen's compensation act unless a written claim for compensation shall be served upon the employer by delivering such written claim to him or his duly authorized agent, or by delivering such written claim to him by registered or certified mail within two hundred (200) days after the date of the accident, or in cases where compensation payments have been suspended within two hundred (200) days after the date of the last payment of compensation; or within one (1) year after the death of the injured employee if death results from the injury within five (5) years after the date of such accident.

If claimant had a single traumatic accident on April 14, 2003, then he had 200 days from that date (November 14, 2003) in which to file a claim. However, if claimant sustained a series of accidents each and every day up to his last day of work for respondent thus aggravating his condition, the last day worked rule is applicable.[3] In that case, claimant would have satisfied the written claim because an E-1 was filed with the Division on May 18, 2004 and thereafter served upon respondent within the 200 day period.

The ALJ considered the claimant's testimony and the relative statutes referenced above and concluded that claimant had not proven a series of injuries. Rather, he concluded claimant sustained an injury on April 14, 2003 for which a timely written claim had not been filed.

The Board has considered the record as a whole and concludes the ALJ's Order should be affirmed. When questioned about the absence of a written claim, claimant's

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[3] *Lott-Edwards v. Americold Corp.*, 27 Kan. App. 2d 689, 6 P.3d 947 (2000).

counsel indicated that "if we could take possibly his boss's deposition and try to get a copy of his employment file there may be one in there."[4] Obviously, there may be additional evidence that bears upon the issue of timely written claim and possibly the ongoing nature of claimant's injury, but under the facts as presented to the ALJ, the Board finds that the ALJ's conclusions are well founded and should not be disturbed.

As provided by the Workers Compensation Act, preliminary hearing findings are not final, but subject to modification upon a full hearing on the claim.[5]

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Bryce D. Benedict dated June 17, 2004, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of September 2004.

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BOARD MEMBER

c: Tamara J. Collins, Attorney for Claimant
James Blickhan/John Graham, Attorneys for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

[4] P.H. Trans. at 27.

[5] K.S.A. 44-534a(a)(2).